

STATE OF MICHIGAN
COURT OF APPEALS

In re GEORGE-MORENO, Minors.

UNPUBLISHED
May 20, 2021

No. 355781
Bay Circuit Court
Family Division
LC No. 20-013086-NA

Before: CAMERON, P.J., and BORRELLO and REDFORD, JJ.

PER CURIAM.

Respondent-mother appeals as of right the trial court’s order authorizing a child protection petition and removing her children, MGM and EGM, from her care. We affirm.

I. FACTUAL BACKGROUND

The children were removed following a domestic violence incident in which respondent-father¹ put respondent-mother in a “headlock” while the two minor children were present at respondent-mother’s home. Respondent-mother called the police and gave them consent to search the home for respondent-father; however, when the police requested permission to search her attic, respondent-mother revoked her consent. The police obtained a search warrant and located respondent-father in the attic. The parties had a history of domestic violence, and the severity of the incidents had been escalating.

The children were removed from respondent-mother’s home and a preliminary hearing was held to consider a child protection petition that had been filed by the Department of Health and Human Services (DHHS). Respondent-mother waived the finding of probable cause, and the court authorized the petition. After hearing testimony, the court ordered that the children be removed from respondent-mother’s home. Respondent-mother subsequently filed a motion for a change of placement in which she sought return of the children to her care. During the pendency of that

¹ Respondent-father is not a party to this appeal.

motion, respondent-mother filed this appeal. The trial court in the meantime granted respondent-mother's motion and ordered that the children be returned.

II. ANALYSIS

Respondent-mother first argues that the trial court erred by authorizing the petition. Because respondent-mother expressly waived a finding of probable cause to authorize the petition, she has waived appellate review of this issue.

Child protective proceedings are initiated when the DHHS files a petition containing “a request for court action to protect a child . . .” MCR 3.961(A). After a petition is filed, the court must hold a preliminary hearing. MCR 3.965(A)(1). At the preliminary hearing, the court must decide whether to authorize the petition, and if the court does authorize the petition it must then decide if the children should be returned to their parents or placed in care. MCR 3.965(B)(12). “The court may authorize the filing of the petition upon a showing of probable cause, *unless waived*, that one or more of the allegations in the petition are true and fall within MCL 712A.2(b).” MCR 3.965(B)(12) (emphasis added).

In *Patel v Patel*, 324 Mich App 631, 634; 922 NW2d 647 (2018) (quotation marks and citations omitted), this Court explained:

A waiver consists of the intentional relinquishment or abandonment of a known right. Waiver is a mixed question of law and fact. The definition of a waiver is a question of law, but whether the facts of a particular case constitute a waiver is a question of fact. The party asserting the waiver bears the burden of proof. Magic words are unnecessary to effectuate a valid waiver, but a waiver must be explicit, voluntary, and made in good faith. In order to ascertain whether a waiver exists, a court must determine if a reasonable person would have understood that he or she was waiving the interest in question. Thus, a valid waiver may be shown by express declarations or by declarations that manifest the parties' intent and purpose, or be an implied waiver, evidenced by a party's decisive, unequivocal conduct reasonably inferring the intent to waive.

“A party who waives a right is precluded from seeking appellate review based on a denial of that right because waiver eliminates any error.” *Cadle Co v City of Kentwood*, 285 Mich App 240, 255; 776 NW2d 145 (2009) (citation omitted).

At the preliminary hearing in this case, counsel stated that respondent-mother wished to waive probable cause and only “take testimony on the issue of placement.” In so doing, she explicitly and unequivocally waived her right to contest authorization of the petition. Therefore, respondent-mother is precluded from seeking appellate review of the issue. *Id.*

Respondent-mother next argues that the trial court erred by removing the children from her care. We decline to review this issue because it is moot.

“The courts of this state may only exercise the authority granted to them by Article VI of the 1963 Constitution. An essential element of that authority is that courts will not reach moot issues.” *In re Smith*, ___ Mich App ___, ___; ___ NW2d ___ (2021) (Docket No. 353861)

(quotation marks and citation omitted); slip op at 2. Whether an issue is moot presents a question of law which we review de novo. *Garrett v Washington*, 314 Mich App 436, 449; 886 NW2d 762 (2016). “Generally speaking, a case becomes moot when an event occurs that makes it impossible for a reviewing court to grant relief.” *In re Detmer/Beaudry*, 321 Mich App 49, 56; 910 NW2d 318 (2017). However, “[w]here a court’s adverse judgment may have collateral legal consequences for a party, the issue is not necessarily moot.” *Id.* (quotation marks and citation omitted; alteration removed). “When no such collateral legal consequences exist, and there is no possible relief that a court could provide, the case is moot and should ordinarily be dismissed without reaching the underlying merits.” *Id.*

Respondent-mother asks this Court to reverse the lower court order removing the children from her care. During the pendency of this appeal, however, the trial court granted respondent-mother’s motion for a change of placement and ordered that the children be returned to their parents. Accordingly, there is no relief that this Court can grant. Further, respondent-mother has not identified any “collateral legal consequences” that exist as a result of the initial court order removing the children. *Id.* Therefore, we conclude that the issue is moot.

Affirmed.

/s/ Thomas C. Cameron
/s/ Stephen L. Borrello
/s/ James Robert Redford